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FSIS BACKGROUND



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Information and
Legislative Affairs
Office

(202) 720-7943
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Labeling Requirements for "Fresh" Raw Poultry Products

The Food Safety and Inspection Service (FSIS) is the public health agency in the U.S. Department of Agriculture (USDA) responsible for ensuring that meat, poultry, and egg products are safe, wholesome, and accurately labeled. FSIS is amending the Federal poultry products inspection regulations concerning the use of the term "*fresh*" on the labeling of raw poultry products. The final rule requires such raw poultry products to be labeled with a descriptive term reflecting that the products have been subjected to a temperature that renders the product hard to the touch. FSIS is taking this action to ensure that poultry products distributed to consumers are not labeled in a false or misleading manner.

FSIS Final Rule

After careful review of information provided from public hearings, results of an informal survey of Meat and Poultry Hotline callers, a scientific literature review, U.S. District Court proceedings, and other information, FSIS is issuing a final rule to amend the Federal poultry products inspection regulations to establish the conditions that would govern the use of the term "*fresh*" on the labeling of raw poultry products. Under the rule, the temperature of product must be at or above 26 °F for a product to be labeled as "*fresh*." Raw poultry product whose internal temperature has ever been below 26 °F, but above 0 °F, may not bear a label of "*fresh*" and must be labeled with the descriptive term "*hard chilled*" or "*previously hard chilled*" in order to inform consumers that the product was subjected to a chilling process that makes the product hard to the touch. Raw poultry product whose internal temperature has ever been at or below 0 °F may not bear a label of "*fresh*" and must be labeled with either the descriptive term "*frozen*" or "*previously frozen*," except when such labeling duplicates or conflicts with special handling label requirements.

Relabeling with appropriate descriptive terms will be required for many products currently on the market that were chilled, stored, and shipped at internal temperatures below 26 °F. In order to allow processors and handlers enough time to make necessary changes to comply with this rule and to exhaust label inventories, the final rule will be implemented 12 months from the date of its promulgation, August 25, 1995. FSIS also will permit the use of pressure sensitive stickers and has authorized generic label approval of descriptive terms. In addition, FSIS has provided for a simple relabeling procedure for products in commerce.

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CATALOGING PREP.

FSIS believes that processors, transporters, wholesalers, and retailers will be able to maintain the appropriate controls to ensure that their poultry products comply with the requirements of this final rule. Products in the possession of or under the control of an official establishment are the responsibility of the establishment. Establishments must take reasonable precautions to ensure that their products are maintained in accordance with the regulations, even when the products are in a transport vehicle or otherwise not physically at the establishment. Products not in compliance with the regulations will be retained or detained and required to be relabeled or, if not relabeled, the products would be condemned. FSIS intends to design a practical compliance policy that maintains the integrity of the 26 °F standard while providing the flexibility to deal with temperature variations that can occur under good manufacturing practices.

Background

The Poultry Products Inspection Act (PPIA) authorizes the Secretary of Agriculture to establish and maintain inspection programs designed to assure consumers that poultry products distributed to them are wholesome, not adulterated, and are properly marked, labeled, and packaged. The PPIA prohibits the shipment in commerce of poultry products that are misbranded.

General requirements that regulate the marking and labeling of federally inspected poultry products are set forth in the poultry products inspection regulations. The regulations also prescribe the processing procedures to be followed and the standards of identity and composition for products that are to be labeled in a certain manner.

FSIS poultry product inspection regulations prescribe freezing procedures for poultry products and the labeling of products that are rapidly changed from a non-frozen state to a frozen state. The regulations state that *"ready-to-cook poultry shall be frozen in a manner so as to bring the internal temperature of the birds at the center of the package to 0 °F or below within 72 hours from the time of entering the freezer."* Under the poultry products labeling regulations, poultry that is not quick-frozen according to certain permitted procedures may be labeled *"frozen"* only if it has undergone prescribed 0 °F or below freezing procedures.

FSIS policy on *"fresh"* labeling, contained in Policy Memo No. 022C, dated January 11, 1989, allowed raw poultry to be labeled *"fresh"* if its internal temperature is above 0 °F and below 40 °F, and it has not been previously frozen at or below 0 °F.

Debate About the Policy

In September 1993, the State of California enacted a law restricting the use of the term *"fresh"* on the labels of poultry products that have been kept at or below 25 °F. The law was amended to restrict the use of the term *"fresh"* on the labels of poultry that has been kept below 26 °F. The California law stimulated debate among consumers, industry representatives, producers, and legislators. In December 1993, three trade associations filed a lawsuit in U.S. District Court in California to prevent the California law from being enforced. They contended, among other things, that the new law was preempted by Federal law. The Poultry Products Inspection Act prohibits individual states from imposing labeling requirements that are different from, or in addition to, labeling requirements set by the Federal Government.

Because of the issues raised by the California law and the litigation that arose in its wake, the Secretary of Agriculture in February 1994, directed FSIS to reexamine its policy on the use of the term *"fresh"* on the labeling of raw poultry products. The Secretary stated that this was necessary to ensure that the policy *"is reasonable and meets today's consumer expectations."* The Secretary also directed FSIS to make sure that any policy change does not create new problems such as growth of bacteria that could cause foodborne illnesses.

At the request of the District Court, USDA filed a brief on the Federal preemption issue. USDA did not take a position on the merits of the California law, and noted that the Secretary had directed a reexamination of USDA's policy on "*fresh*" in February of 1994.

In April 1994, the Judge ruled that the labeling provision in the California law was preempted by Federal law and permanently enjoined the State from enforcing its law. This decision was substantially affirmed in December 1994.

FSIS Review of the Policy

In reexamining the policy for use of the term "*fresh*" on the labeling of poultry products, FSIS conducted public hearings, informally surveyed callers to the USDA Meat and Poultry Hotline, and reviewed scientific literature on the safety of poultry products during shipment and storage. In addition, the USDA Agricultural Research Service (ARS) conducted studies on sensory and quality characteristics of poultry exposed to various time and temperature combinations. Documentation from the public hearings, informal survey, scientific literature review, and ARS study was placed on file in the office of the FSIS Docket Clerk.

FSIS Proposal

On January 17, 1995, FSIS issued a proposed rule in the *Federal Register* to amend the Federal poultry products inspection regulations to establish conditions that would specify the use of the term "*fresh*" on the labeling of raw poultry and the language that would inform consumers when such products do not meet the FSIS proposed criteria for "*fresh*." FSIS stated in the proposal that its current policy on the use of the term "*fresh*" on labeling of raw poultry products could be misleading consumers about products they seek to buy as "*fresh*." FSIS also stated that there should be no increased microbiological safety risk associated with raw poultry that is maintained at 40 °F or below.

Comments to the FSIS Proposal

The comment period for the FSIS proposal was scheduled to close March 20, 1995, and was extended to May 19, 1995, to accommodate requests for an extension to adequately review the ARS evaluation on chilled poultry, allow the National Advisory Committee on Microbiological Criteria for Foods the opportunity to comment, and solicit public comments on other options. FSIS received over 26,000 comments from individuals, poultry processors and growers, trade associations, state government agencies, academia, consumer organizations, congressional members, and other sources.

FSIS Conclusions

After evaluating all comments and other data in the rulemaking record, FSIS concluded that the term "*fresh*" should not be used on the labeling of products that have been chilled until they are hard to the touch. Consumers do not equate the term "*fresh*" with a product that has ever been chilled until it is hard to the touch. FSIS concluded that a temperature-based requirement for use of the term "*fresh*" is necessary to inform consumers about the nature of the poultry products they purchase.

For More Information



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Consumers: Call USDA's Meat and Poultry Hotline:

1-800-535-4555

In the Washington, D.C., area, call:

(202) 720-3333

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